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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2011-693**
ACCUSATION

12 **LORI DIANE ISLE**
13 **aka LORI DIANE BYRD**
14 **822 N. Stagecoach Lane**
Fallbrook, CA 92028

15 **Registered Nurse License No. 732002**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about July 21, 2008, the Board of Registered Nursing issued Registered Nurse
24 License Number 732002 to Lori Diane Isle, also known as Lori Diane Byrd (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

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10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

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17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
19 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
22 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(August 9, 2010 Criminal Conviction for DUI on May 23, 2010)

14. Respondent has subjected her registered nurse license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about August 9, 2010, in a criminal proceeding entitled *People of the State of California v. Lori Diane Isle*, in Riverside County Superior Court, case number SWM10004137, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, misdemeanors.

b. As a result of the conviction, on or about August 9, 2010, Respondent was sentenced to 36 months summary probation and ordered to serve 10 days in the county jail, with credit given for two days (to be served in the Work Release Program). Respondent was further ordered to complete a nine-month first offender DUI program, pay \$2,261.43 in fees, fines, and restitution, and comply with the terms of DUI probation.

c. The facts that led to the conviction are that on or about the early morning of May 23, 2010, a California Highway Patrol (CHP) officer observed a vehicle, driven by Respondent, fail to stop at a stop sign. Respondent's vehicle jerked to a stop approximately 10 feet past the limit line, then made a left turn driving over a curb in the process. The CHP Officer made a traffic stop a short distance away. Upon contact with Respondent, the officer noted a strong odor of an alcoholic beverage emitting from the interior of the vehicle. Respondent's eyes were watery and her speech was slurred. Respondent was asked to exit her vehicle; she was very unsteady and swayed as she walked. The officer smelled alcohol on her breath and person. Respondent submitted to a series of field sobriety tests which she failed to complete as instructed and demonstrated. Respondent was arrested for driving under the influence and taken into custody. Respondent provided a blood sample which tested with a .23 percent BAC.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

3 15. Respondent has subjected her registered nurse license to disciplinary action under
4 section 2762, subdivision (b) of the Code in that on or about May 23, 2010, as described in
5 paragraph 14, above, Respondent used alcoholic beverages to an extent or in a manner that was
6 dangerous to herself, and potentially dangerous to others in that she operated a motor vehicle with
7 a significantly high BAC (.23%), nearly three times the legal limit.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

10 16. Respondent has subjected her registered nurse license to disciplinary action under
11 section 2762, subdivision (c) of the Code in that on or about August 9, 2010, as described in
12 paragraph 14, above, Respondent was convicted of criminal offenses involving the consumption
13 and/or self-administration of alcohol, with a high BAC, which constitutes unprofessional conduct.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 732002, issued to Lori
18 Diane Isle, also known as Lori Diane Byrd;

19 2. Ordering Lori Diane Isle to pay the Board of Registered Nursing the reasonable costs
20 of the investigation and enforcement of this case, pursuant to Business and Professions Code
21 section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 2/7/11

24 *Louise R. Bailey*
LOUISE R. BAILEY, M.ED., RN
25 Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
26 State of California
27 Complainant

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